UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF WEST VIRGINIA HUNTINGTON DIVISION

Jonathan R., minor, by Next Friend Sarah DIXON, et al.,)
Plaintiffs,)
v.) Case No. 3:19-cv-00710
Jim JUSTICE, in his official capacity as the Governor of West Virginia, <i>et al.</i> ,)))
Defendants.)

PLAINTIFFS' MOTION TO LIFT STAY OF DISCOVERY AND RENEWED MOTION FOR AN AMENDED SCHEDULING ORDER

On September 20, 2022, Defendants filed a Motion to Stay Discovery Pending Resolution of Defendants' Motion to Dismiss and, if Appropriate, Plaintiffs' Motion for Class Certification. ECF No. 274. Plaintiffs objected on September 23, 2022 (ECF No. 277), and Defendants submitted a reply on October 21, 2022. ECF No. 288. The Court granted a stay on February 16, 2023 because, as stated in the Court's order, "[t]he Court is aware that the parties are actively engaged in settlement discussions, working to resolve this case. As such, the Court GRANTS Defendants' motion and hereby orders that all discovery be STAYED." ECF No. 306. The Court's order did not further analyze any of the arguments and responses thereto made in the parties' briefing. While the parties engaged in settlement discussions, the parties failed to reach an agreement, and negotiations are no longer ongoing. Therefore, the reason for the stay is now null, and Plaintiffs respectfully request that the stay be lifted so that the parties can continue litigating this case and Plaintiffs can seek relief for the foster children of West Virginia.

Plaintiffs also note that since Defendants requested a stay of discovery, the Court issued a decision on Defendants' Motion to Dismiss on January 13, 2023. ECF No. 300. The Court sustained Plaintiffs' substantive due process claims in significant part as well as their claims under the

Americans with Disabilities Act and Rehabilitation Act. *See id.* Thus, there is no longer a need to stay discovery in connection with a pending motion to dismiss. Moreover, to the extent that Defendants sought a stay of discovery in connection with their petition to the Supreme Court for certiorari in connection with the Fourth Circuit Court of Appeal's decision on their motion to dismiss, this petition has since been denied. ECF No. 284.

To the extent that Defendants argue that the Court should continue to stay discovery until the Court issues a decision on Plaintiffs' Motion for Class Certification, this argument is meritless for the reasons stated in Plaintiffs' Opposition to Defendants' Motion to Stay Discovery, including that Defendants' motion fails to consider the effects of the stay on the thousands of West Virginian children currently in foster care. ECF No. 277. These children are entitled to speedy relief, and Plaintiffs respectfully request that they be able to continue litigation in an effort to seek said relief.

In addition to Defendants' Motion to Stay, on December 19, 2022, Defendants filed a motion for a protective order, requesting that the Court order the withdrawal of or stay the response to Plaintiffs' Second Set of Requests for Admission and Plaintiffs' Seventh Set of Requests for Production. ECF No. 291. Defendants subsequently provided objections to Plaintiffs' Second Set of Requests for Admission. *See* ECF No. 294. Plaintiffs responded by requesting a modification of the Court's prior Scheduling Order. ECF No. 293. The Court granted Defendants' motion and ordered Plaintiff's Seventh Set of Requests for Production withdrawn on January 10, 2023. ECF No. 298. Now that attempted settlement negotiations have ended, Plaintiffs renew their request for an amended scheduling order as requested in their original motion and request that their Requests for Production be reinstated. ECF No. 293.

Last, on January 26, 2023, Defendants filed a motion to stay the time to file an Answer to the Complaint. ECF No. 303. Given the then ongoing settlement negotiations, the Court granted a stay on January 27, 2023. ECF No. 305. Plaintiffs respectfully request that this stay also be lifted.

Plaintiffs conferred with Defendants via email on March 9, 2023 regarding this Motion. On March 10, 2023, Defendants relayed to Plaintiffs that they would oppose the Motion.

Dated: March 13, 2023 Respectfully submitted,

/s/ Marcia Robinson Lowry

A Better Childhood Marcia Robinson Lowry, admitted pro hac vice Julia K. Tebor, admitted pro hac vice Aarti Iyer, admitted pro hac vice 355 Lexington Avenue, Floor 16 New York, NY 10017

Tel.: (646) 795-4456
Fax: (212) 692-0415
mlowry@abetterchildhood.org
jtebor@abetterchildhood.org
aiyer@abetterchildhood.org

/s/ Richard W. Walters

Shaffer & Shaffer, PLLC Richard W. Walters, WVSB #6809 rwalters@shafferlaw.net J. Alexander Meade, WVSB #13021 ameade@shafferlaw.net 2116 Kanawha Boulevard, East P.O. Box 3973 Charleston, WV 25339

Tel: (304) 344-8716 Fax: (304) 344-1481

/s/ Lori Waller

Disability Rights of West Virginia Lori Waller, WVSB #11303 lwaller@drofwv.org 1207 Quarrier Street, Suite 400 Charleston, WV 25301

Tel: (304) 346-0847 Fax: (304) 346-0687

Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

I, J. Alexander Meade, counsel for the plaintiffs herein, hereby verify that on this 13th day of March, 2023, I electronically filed the foregoing "Plaintiffs' Motion to Lift Stay of Discovery and Renewed Motion for an Amended Scheduling Order" with the Clerk of the Court via the CM/ECF system, which will electronically serve and notify counsel of record as follows:

Philip J. Peisch, Esq.
Caroline M. Brown, Esq.
Julia M. Siegenberg, Esq.
Rebecca E. Smith
Brown & Peisch PLLC
1233 20th Street NW, Suite 505
Washington, DC 20001
Counsel for Defendants

Steven R. Compton, Esq. West Virginia Attorney General's Office 812 Quarrier Street, 2nd Floor Charleston, WV 25301 Counsel for Defendants

/s/ J. Alexander Meade
J. Alexander Meade (WVSB #13021)